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## BADAN PENGURUSAN BERSAMA KOMPLEKS PANDAN SAFARI LAGOON v. TAM CHENG MENG

HIGH COURT MALAYA, KUALA LUMPUR
FAIZAH JAMALUDIN JC
[CIVIL APPEAL NO: WA-11BNCVC-3-01-2017]
B 23 FEBRUARY 2018

***LAND LAW:*** *Strata title – Management corporation – Joint management body ('JMB') – Maintenance charges – Claim for outstanding maintenance service charges – Whether there had to be assignment under s. 4(3) of Civil Law Act 1956 from developer to JMB for JMB to have cause of action – Whether JMB's action against owner of unit in building time barred – Strata Management Act 2013, ss. 9(3), 13(2) & 15*

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***LIMITATION:*** *Statutory provision – Applicability – Joint management body ('JMB') filed action against owner of unit in building for outstanding maintenance service charges – Whether Strata Management Act 2013 silent on whether Limitation Act 1953 applicable – Whether action time barred – Limitation Act 1953, s. 6*

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***LAND LAW:*** *Strata title – Management corporation – Joint management body ('JMB') – Claim for outstanding maintenance service charges – Appeal against Magistrate's decision – Preliminary objections raised – Whether there could be an appeal from a decision of a subordinate court in a civil cause where amount is RM10,000 or less – Whether notice of appeal should expressly state questions of law – Whether appeal incompetent by virtue of s. 28(1) of Courts of Judicature Act 1964 – Whether preliminary objections disallowed*

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This was an appeal by the appellant ('plaintiff'), the joint management body ('JMB') of the Kompleks Pandan Safari Lagoon ('the building') against the decision of the Magistrate in its suit against the respondent ('defendant'), the purchaser and owner of a unit of parcel in the building. The plaintiff's claim against the defendant at the Magistrate's Court was for outstanding service charges for the building in the sum of RM81,413.93 for the period up to June 2015. After a full trial, the Magistrate allowed only part of the plaintiff's claim for the sum of RM3,579.87 which was the amount of the service charges owed by the defendant to the plaintiff for the period from July 2014 to June 2015. Dissatisfied, the plaintiff filed this appeal. The issues that arose were (i) whether the Magistrate had erred when she held that there had to be an assignment under s. 4(3) of the Civil Law Act 1956 ('CLA') from the developer and the property managers appointed by the liquidator to the plaintiff, in order for the plaintiff to have a cause of action against the defendant for the unpaid management fees for the period from 2005 to 13 June 2014 *ie*, the date of the plaintiff's constitution; and (ii) whether limitation had set in under s. 6 of the Limitation Act 1953 and the plaintiff's

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claim against the defendant was statute barred. A preliminary objection was raised by the defendant that the plaintiff's appeal to the High Court was incompetent by virtue of s. 28(1) of the Courts of Judicature Act 1964 ('CJA').

**Held (allowing appeal; setting aside Magistrate's decision):**

**(1)** Section 28 of the CJA read as a whole means that there could not be an appeal from a decision of a subordinate court in a civil cause or matter, where the amount in dispute or the value of the subject matter was RM10,000 or less. The said section does not state 'where the decision of the subordinate court is for a sum of RM10,000 or less.' Therefore, notwithstanding that the amount awarded by the Magistrate was RM3,579.87, the amount in dispute in this instant case was the sum of RM81,413.93 which the plaintiff claimed was the service charges owed by the defendant as at 22 June 2015. Further, s. 28(1) of the CJA does not state that the notice of appeal should expressly state the questions of law. The questions of law in this appeal were stated in the memorandum of appeal. Accordingly, the defendant's preliminary objection was disallowed. (paras 15-17, 19 & 20)

**(2)** Pursuant to s. 9(3) of the Strata Management Act 2013 ('SMA 2013'), the developer had the statutory power to collect the services charges from the parcel owners, including the defendant. Under s. 13(2), the developer and the property managers appointed by the liquidator may continue to collect moneys intended for the maintenance and management of the building until the setting up of the plaintiff. The property managers' role and duties ceased upon the formation of the plaintiff. There was a statutory transfer/handover provision in s. 15(1) of the SMA 2013 requiring the developer to transfer and handover all the balances and invoices to the plaintiff once it was established. Accordingly, there was no legal necessity for an assignment under s. 4(3) of the CLA from the developer or the liquidator to transfer to the plaintiff of its rights to collect the charges from the defendant. (paras 37 & 38)

**(3)** The Magistrate had erred in law when she held that for the plaintiff's claim before June 2015, the Building and Common Property (Maintenance and Management) Act 2007 ('BCPA') applied and for the plaintiff's claims for the month of June 2015, the SMA 2013 applied. The Magistrate had failed to take into account the retrospective application of the SMA 2013 to developers of developments that had been completed prior to the commencement of the SMA 2013 and to JMB's established under the BCPA. Developers of buildings completed on or before 1 June 2015 are retrospectively given the statutory power by the SMA 2013 to collect the service charges from parcel owners prior

to the establishment of a JMB and if they had been collecting the charges before 1 June 2015, they could continue collecting such charges until the JMB is established. (paras 39 & 41)

**(4)** The SMA 2013 is silent on whether the Limitation Act 1953 is inapplicable to proceedings in court. As either a JMB can choose to file a claim in the tribunal or in a court of competent jurisdiction, it could be implied that the Limitation Act shall also not apply to proceedings of court. To interpret otherwise would result in a discrepancy as to claims made at the tribunal and at court. It would defeat the SMA 2013's stated purpose if the plaintiff's claim for the outstanding service charges made at court was time barred whereas if the plaintiff had made the claim at the tribunal, it would not be time barred. Thus, the Magistrate had erred in law when she held that limitation had set in under s. 6 of the Limitation Act 1953 and that the plaintiff's claim against the defendant was statute barred. (paras 43, 46 & 47)

**Case(s) referred to:**

*Lein Tiam Hock v. Arumugam Kandasamy [1999] 2 CLJ 853 HC* ***(not foll)***

*Malayan Banking Bhd v. Syed Ali Mohsin & Ors [1991] 3 CLJ 2892; [1991] 3 CLJ (Rep) 236 HC* ***(refd)***

*Mohamad Safuan Wasidin & Anor v. Mohd Ridhuan Ahmad (An Infant) [1994] 1 LNS 186 HC* ***(refd)***

*Neoh Choo Ee & Co Sdn Bhd v. Vasalamany Govindasamy & Anor [2004] 3 CLJ 321 CA* ***(refd)***

*Palm Oil Research And Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd [2004] 2 CLJ 265 FC* ***(refd)***

*Prangin Mall Sdn Bhd v. Tang Joo Ming & Anor [2012] 1 LNS 1285 CA* ***(refd)***

*Teresa Monohary Thairiyam & Anor v. Tan Ah Lek [1996] 1 CLJ 149 CA* ***(refd)***

*Yai Yen Hon v. Teng Ah Kok & Sim Huat Sdn Bhd & Anor [1997] 2 CLJ 68 FC* ***(refd)***

**Legislation referred to:**

Building and Common Property (Maintenance and Management) Act 2007, s. 5(4)

Civil Law Act 1956, s. 4(3)

Courts of Judicature Act 1964, ss. 28(1), 68(1)(a)

Interpretation Acts 1948 and 1967, s. 17A

Limitation Act 1953, s. 6

Rules of the High Court 1980, O. 55

Strata Management Act 2013, ss. 3, 7(2), 9(3), 13(2), 15(1), 33, 37(1), (2), 38, 40, 105, 153

Subordinate Courts Rules 1980, O. 49

*For the appellant - R Santhi; M/s Susielan & Assocs*

*For the respondent - LK Tan & JY Yap; M/s Othman Hashim & Co*

*[Editor's note: Appeal from Magistrate's Court, Kuala Lumpur; Suit No: A72NCVC-2870-06-2015.]*

*Reported by Suhainah Wahiduddin*

## JUDGMENT

**Faizah Jamaludin JC:**

### Introduction

**[1]** This is an appeal by the appellant/plaintiff who is the joint management body ("JMB") of Kompleks Pandan Safari Lagoon (the "building") against the decision of the learned Magistrate in its suit against the respondent/defendant. The defendant is a purchaser and owner of a unit of parcel in the building.

**[2]** The plaintiff's claim against the defendant at the Magistrate's Court was for outstanding service charges for the building in the sum of RM81,413.93 for the period up to June 2015. The learned Magistrate after full trial allowed only part of the plaintiff's claim for the sum of RM3,579.87, which is the amount of the service charges owed by the defendant to the plaintiff for the period from July 2014 to June 2015.

**[3]** Dissatisfied with the Magistrate's decision, the plaintiff filed this appeal. At the conclusion of the hearing of this appeal, I allowed the appeal and the plaintiff's claim for the sum of RM81,413.93 together with interest of 5% from 26 June 2015 until the date of full settlement of the judgment sum. Cost of RM10,000 was awarded to the plaintiff. The decision of the Magistrate's Court was set aside.

**[4]** The full grounds of my judgment are set out herein. The parties are referred to here as plaintiff and defendant as they were in the Magistrate's Court.

### Background

**[5]** The plaintiff was constituted on 13 June 2014 under the Building and Common Property (Maintenance and Management) Act 2007 (Act 663) ("BCPA"). The BCPA was enacted to supplement the Strata Titles 1985 (Act 318) ("STA 1985") in relation to the maintenance and management of subdivided buildings. The BCPA applied to JMB prior to the issuance of strata titles for the parcels in the subdivided building. The BCPA was repealed and replaced on 1 June 2015 by the Strata Management Act 2013 (Act 757) ("SMA 2013").

**[6]** The defendant is a purchaser of one unit of parcel in the building ie, Unit No. D1-F16/PP-F16, ("unit"). The defendant purchased the unit from the developer of the building, Dirga Niaga Selangor Sdn Bhd ("developer") through a sale and purchase agreement dated 18 November 1995 ("SPA").

**[7]** The relevant provisions in the SPA for purposes of the plaintiff's claim are cls. 13 and 15, which state as follows:

13. PAYMENT SERVICES CHARGES

The Purchaser shall be liable to pay the service charges for the maintenance and management of the Common Property and Common Facilities provided by the Developer prior to the establishment of a Management Corporation under the Stratas Title Act 1985 and from the date the Purchaser takes vacant possession of the Parcel, the Purchaser shall pay a reasonable proportion of costs and expenses incurred.

15. PAYMENT OF OUTGOINGS

The Purchaser shall be liable for all outgoings including quit rent, rates, taxes, assessment and other charges in the relevant proportion to the Parcel in from the date of this Agreement and the Purchaser shall indemnify the Developer for such outgoings in respect of the Parcel.

**[8]** At the trial, the defendant (DW1) in cross-examination by the plaintiff's counsel admitted that he had never paid any of the maintenance and management charges since taking vacant possession of the unit (see rekod rayuan (jilid 1) p. 59).

**[9]** The developer was wound up on 28 March 2006 pursuant to an order of the High Court (Suit No. D5-28-536-2005). The High Court on 1 December 2008 appointed Augustine a/l TK James from Radiant Consulting Asia Sdn Bhd as a private liquidator of the developer ("liquidator"). Prior to the liquidator's appointment, the majority owner of the units in the building, Venue Venture Sdn Bhd, was maintaining and managing the building. Venue Venture asked the liquidator, after his appointment as liquidator, to take over the management and maintenance of the building. As the liquidator is not a property manager, it first appointed Fadzilah & Fikri Sdn Bhd with effect from 30 April 2009 and then Jova Building Services on 1 June 2011 as property managers to operate and manage the building until the plaintiff is formed.

**Issue To Be Tried At The Magistrate's Court**

**[10]** There was only one issue to be tried at the Magistrate's Court. It was whether the defendant is liable to pay the outstanding service charges of RM81,413.93 to the plaintiff.

**Preliminary Objection**

**[11]** The defendant raised a preliminary objection that the plaintiff's appeal to the High Court is incompetent by virtue of s. 28(1) of the Courts of Judicature Act 1964 ("CJA"). Section 28 of the CJA states:

Civil appeals from subordinate courts

28. (1) Subject to any other written law, no appeal shall lie to the High Court from a decision of subordinate court in any civil cause or matter where the amount in dispute or the value of the subject-matter is ten thousand ringgit or less except on a question of law.

**[12]** The defendant refers to the High Court's decision in *Lein Tiam Hock v. Arumugam Kandasamy* [1999] 2 CLJ 853; [1999] 3 AMR 3670; [1999] 6 MLJ 129, where Suriyadi Halim Omar J (as he then was) held that the "amount in dispute" or the "value of the subject-matter" under s. 28 of the CJA:

> must relate to the decision of the subordinate court, and not to any sum claimed either by the plaintiff or the combined sum of the claim and counter-claim submitted by the defendant, if any.

**[13]** His Lordship came to the said conclusion after distinguishing the decisions of the Federal Court in *Yai Yen Hon v. Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 2 CLJ 68; [1997] 2 AMR 1742; [1997] 1 MLJ 136 and the Court of Appeal in *Teresa Monohary Thairiyam & Anor v. Tan Ah Lek* [1996] 1 CLJ 149; [1995] 3 MLJ 365. Both these cases considered the provision in s. 68 of the CJA, which governs appeals to the Court of Appeal. Section 68 of the CJA states:

> Non-appealable matters
>
> 68. (1) No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> (a) when the amount or value of the subject matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal;
>
> (b) where the judgment or order is made by consent of parties;

**[14]** In *Yai Yen Hon*, the Federal Court held that the appeal was allowed even if the judgment sum was less than RM100,000 (which was the then threshold sum in s. 68(1)(a) of the CJA). In *Manohary Teresa*, the Court of Appeal held that no leave was required although the judgment sum was less than RM250,000. In both cases, the Federal Court and the Court of Appeal held that the monetary limit set was based on the sum claimed and not the judgment sum. However, Suriyadi Halim Omar J in *Lein Tiam Hock*, distinguished both cases on the grounds that s. 28 of the CJA unlike s. 68 of the CJA had the word "decision" in it. His Lordship held that s. 28 read as a whole meant that the judgment sum of the subordinate court must exceed the sum of RM10,000 to enable an appeal from the subordinate court to the High Court.

**[15]** Respectfully, I have to disagree with the finding in *Lein Tiam Hock*, which being a decision of the High Court is only of persuasive authority on this court. In my view, s. 28 of the CJA read as a whole means that there cannot be an appeal from a decision of a subordinate court in a civil cause or matter, where the amount in dispute or the value of the subject matter is RM10,000 or less. Section 28 does not state "where the decision of the subordinate court is for a sum of RM10,000 or less". Similar to s. 68, s. 28

A states "where the value in dispute or the value of the subject matter" is for a sum of RM10,000 or less. For this reason, in my view, the Federal Court and the Court of Appeal's decisions in *Yai Yen Hon* and *Manohary Teresa* respectively are not distinguishable: they apply to appeals from the decisions of the subordinate courts to the High Court in a civil cause or matter.

B **[16]** Therefore, notwithstanding that the amount awarded by the Magistrate's Court is RM3,579.87, the amount in dispute in this instant case is the sum of RM81,413.93 which the plaintiff claims is the service charges owing by defendant as at 22 June 2015.

C **[17]** Defendant's counsel further submits that as the notice of appeal did not state the questions of law to be decided, the appeal should not be heard by this court. I have to respectfully disagree with learned counsel for the defendant. The Court of Appeal in *Neoh Choo Ee & Co Sdn Bhd v. Vasalamany Govindasamy & Anor* [2004] 3 CLJ 321; [2004] 4 AMR 357 held that the notice of appeal does not have to set the questions of law which the appeal D involves. Gopal Sri Ram JCA in delivering the judgment of the Court of Appeal held that if the court was to hold otherwise "the court would be imposing a condition of appeal that written law does not prescribe". His Lordship held that s. 28(1) of the CJA does not state the notice of appeal should expressly state the questions of law. Neither does O. 49 of the E Subordinate Courts Rules 1980 or O. 55 of the Rules of the High Court 1980. In *Neoh Choo Ee*, the Court of Appeal disagreed with the High Court Judge that a notice of appeal in Form 140 of the SCR should set out the questions of law which the appeal involves. It agreed that points of law will in the usual way be taken in the memorandum of appeal and held that the High Court F ought to resort to the memorandum of appeal.

**[18]** The Court of Appeal in *Neoh Choo Ee* held as "wrongly decided and should no longer be considered as good law" the decisions of the High Court in *Malayan Banking Bhd v. Syed Ali Mohsin & Ors* [1991] 3 CLJ 2892; [1991] 3 CLJ (Rep) 236; [1992] 2 MLJ 116 and *Mohamad Safuan Wasidin & Anor* G *v. Mohd Ridhuan Ahmad (an Infant)* [1994] 1 LNS 186; [1994] 2 MLJ 187. Both these cases held that the notice of appeal in Form 140 must state at least generally the question or questions of law that the appellant wishes to appeal on.

**[19]** For these reasons, I find that even if the High Court's interpretation H in *Lein Tiam Hock* of s. 28 of the CJA is used in this case, this instant appeal would come within the proviso in s. 28 of the CJA as it relates to questions of law. The questions of law in this appeal are stated in the memorandum of appeal.

I **[20]** Accordingly, the defendant's preliminary objection is disallowed.

## The Plaintiff's Appeal

**[21]** The plaintiff's appeal is essentially premised on two questions of law, namely:

(a) whether the Magistrate had erred when she held that there had to be an assignment under s. 4(3) of the Civil Law Act 1956 ("CLA") from the developer and the property managers appointed by the liquidator to the plaintiff, in order for the plaintiff to have a cause of action against the defendant for the unpaid management fees for the period from 2005 to 13 June 2014 ie, the date of the plaintiff's constitution; and

(b) whether limitation had set in under s. 6 of the Limitation Act 1953 and the plaintiff's claim against the defendant is statute-barred.

## Questions Before This Court

*Was An Assignment Of The Defendant's Debt To The Plaintiff Required?*

**[22]** The Magistrate found that the plaintiff had successfully proven its claim against the defendant. However, the Magistrate held that based on the Court of Appeal's decision in *Prangin Mall Sdn Bhd v. Tang Joo Ming & Anor* [2012] 1 LNS 1285; [2013] 6 MLJ 753 since there was no written notice of assignment showing that the developer and the property managers appointed by the liquidator had assigned under s. 4(3) of the CLA the rights to collect the service charges to the plaintiff, the plaintiff does not have any right to collect the services charges prior to its establishment. The plaintiff was established on 13 June 2014. The writ of summons was filed on 26 June 2015. The Magistrate held that the plaintiff is allowed to claim the service charges from July 2014 until June 2015.

**[23]** In *Prangin Mall*, the appellant was the property agent appointed by the developer of the mall to maintain and manage the mall before the formation of the JMB. The question before the Court of Appeal was whether the appellant retained its right to claim the charges incurred prior to the formation of the JMB. The Court of Appeal held that the role and duties of the appellant as property manager ceased on the formation of the JMB.

**[24]** The Court of Appeal in *Prangin Mall* recognised that the developer is under a duty pursuant to s. 5(4) of the BCPA to maintain and manage the mall before the formation of the JMB. Notwithstanding the obligation, the BCPA did not expressly state that the developer has the right to collect the services charges required to undertake the maintenance and management from the unit owners. The Court of Appeal held that since the BCPA is silent on the power of the developer to collect the charges, such power is a contractual power derived from the sale and purchase agreement with the unit owners and not one derived from statute. It also held that since there is no provision in the BCPA which transfers or handovers the developer's contractual right

to the JMB, the developer's contractual right to collect the charges had to be assigned from the developer to the JMB. Rohana Yusuf J (as she then was) in delivering the judgment of the Court of Appeal held that:

> [10] The duty of the developer to carry out maintenance and management of the mall before the formation of the JMB is imposed by s. 5(4) of Act 663. It is therefore a legal duty imposed on the developer to carry out maintenance and management of the mall before the formation of JMB. **Having imposed such a duty the law is silent on the right to collect the charges by the developer**
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> ...
>
> [13] Having outlined the above, it becomes clear that the developer's right to collect charges is one that is derived under the sale and purchase agreement and the amount owed by the respondents herein are expenses incurred by the developer prior to the formation of JMB. This contractual right to collect the charges under the sale and purchase agreement remains enforceable despite the obligation to manage and maintain the building ceased upon the formation of the JMB. We say this because Act 663 does not override or transfer that contractual right to JMB.
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> ...
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> [18] Any 'handing over' or transfer of contractual rights can only take effect if there is an assignment of such rights either contractually or by law. **There is no evidence of an assignment of the contractual right, nor any provision in Act 663 that transfers or hand over that contractual right**. In this regard, we are mindful that if the words in the statute are clear and precise, then no more can be said or inferred than those words in the ordinary sense.
>
> (emphasis added)

Strata Titles (Amendment) Act 2013 & Strata Management Act 2013

**[25]** The Strata Titles (Amendment) Act 2013 ("STAA 2013") and the SMA 2013 came into force on 1 June 2015. The STAA 2013 carved out all the provisions relating to the management of subdivided buildings under the STA 1985 and placed it under the SMA 2013. The SMA 2013 is to be read and construed with the STA 1985. Section 3 of the SMA 2013 states:

> Construction of the Act
>
> 3. This Act shall be read and construed with Strata Titles Act 1985 and the subsidiary legislation made under that Act in so far as they are not inconsistent with the provisions of this Act or the regulations made under this Act.

**[26]** The SMA 2013 repealed the BCPA. Section 153 of the SMA 2013 states as follows:

> Repeal
>
> 153. The Building and Common Property (Maintenance and Management) Act 2007 [Act 663] is repealed.

**[27]** Chapter 5 of the SMA 2013 contains transitional and saving provisions due to the repeal of the BCPA. Section 37(1) of the SMA 2013 states that all references to the BCPA in any written law or document, when the SMA 2013 comes into operation, shall be construed as references to the BCPA. Section 37(2) of the SMA 2013 states that:

> Reference to repealed Act and savings provision
>
> 37. (1) All references to the repealed Act in any written law or document shall, when this Act comes into operation, be construed as references to this Act.
>
> (2) nothing in this Act [SMA 2013] shall affect the past operation of, or anything done under the repealed Act [BPCA] before the date of coming into operation of this Act [SMA 2013].

**[28]** Pursuant to s. 38 of the SMA 2013, a JMB established under the BCPA is deemed to be established under the SMA 2013 and that the provisions of the SMA 2013 applies to the JMB. Section 38 states as follows:

> Existing Body and committee
>
> 38. A Joint Management Body established or a Joint Management Committee elected under the repealed Act shall be deemed to have been established or elected under this Act except that after the commencement of this Act the provisions of this Act shall apply to such a Body or Committee.

**[29]** Accordingly, the plaintiff which is a JMB formed under the BCPA is deemed to be established under the SMA 2013 and the provisions of the SMA 2013 applies to plaintiff.

**[30]** Under s. 40 of the SMA 2013, every accounts or fund established by a developer or a JMB under the BCPA before the commencement of the SMA 2013 shall continue and deemed to be established under the SMA 2013.

Duties And Powers Of Developer Prior To The Establishment Of A JMB

**[31]** Chapter 2 of the SMA 2013 contains provisions governing management of a subdivided building by a developer before the JMB is established.

**[32]** Section 9 of the SMA 2013 provides that a developer during the "developer's management period", shall be responsible to maintain and manage properly any building or land intended for subdivision into parcels and the common property of the building. "Developer's management period" is defined in s. 7(2) of the SMA 2013 as:

> the period commencing from the date of delivery of vacant possession of a parcel to a purchaser by the developer until one month after the establishment of the joint management body or such other time as be extended by the Commissioner.

**[33]** Sections 9(3), 13(2) and 15(1) of the SMA 2013 remedied the lacuna in the BPCA as regards the developer's power to collect the charges for maintenance of the building from the property owners and the transfer/ hand over of that right from the developer to the JMB; which lacuna was highlighted by the Court of Appeal in *Prangin Mall*.

**[34]** Section 9(3) of the SMA 2013 expressly states that the developer has the power during the developer's management period to collect charges and contribution to the sinking fund from the parcel owners. Section 9(3) of the SMA states as follows:

> 9(3) The powers of the developer during the developer's management period shall be as follows:
>
> (a) to collect the Charges from the parcel owners in proportion to the allocated share units of their respective parcels;
>
> (b) to collect the contribution to the sinking fund from the parcel owners;
>
> (c) to authorise expenditure for the carrying out of maintenance and management of the buildings or lands intended for subdivision into parcels and the common property;
>
> (d) to recover from any parcel owner any sum expended by the developer in respect of that parcel in complying with any such notice or order referred to under paragraph (2)(d); and
>
> (e) to do all things reasonably necessary for the performance of its duties under this Act.

**[35]** Section 13(2) of the SMA 2013 states that any developer who has collected moneys from purchasers for the maintenance and management of any building may continue to do so until the JMB is established. It states as follows:

> 13(2) Notwithstanding subsection (1), any developer of a development area which has been completed on or before the commencement of this Act and has, immediately before that date, been collecting moneys from the purchasers for the maintenance and management of any building or land intended for subdivision into parcels and the common property comprised in the development area, may continue to do so until the joint management body is established, provided that all moneys shall be collected and dealt with by the developer in accordance with this Act.

**[36]** Section 15(1) of the SMA 2013 requires the developer before the developer's management period expires, *inter alia*, to transfer all balances of moneys in the maintenance account and the sinking fund account; and hand over all invoices, receipts and payment vouchers in respect of the maintenance account and sinking fund account to the JMB. Section 15(1) states as follows:

(1) A developer shall, before the developer's management period expires- A

(a) transfer all balances of moneys in the maintenance account and the sinking fund account, after payment of all the expenditure which have been properly charged to the accounts, to the joint management body;

(b) hand over to the joint management body: B

(i) the administration office set up by the developer under paragraph 9(4)(a);

(ii) the audited accounts of the maintenance account and the sinking fund account or, if such accounts have not been audited, the unaudited accounts; C

(iii) all the assets of the development area;

(iv) all records relating to and necessary for the maintenance and management of the buildings or lands intended for subdivision into parcels and the common property of the development area; and D

(v) all invoices, receipts and payment vouchers in respect of the maintenance account and sinking fund account.

**[37]** Therefore, pursuant to s. 9(3) of the SMA 2013, the developer in this instant case has the statutory power to collect the service charges from the E parcel owners, including the defendant. Under s. 13(2), the developer and the property managers appointed by the liquidator may continue to collect moneys intended for the maintenance and management of the building until the setting up of the plaintiff. Per the decision in *Prangin Mall*, the property managers' role and duties ceased upon the formation of the plaintiff F (see para. [23] above). There is a statutory transfer/handover provision in s. 15(1) of the SMA 2013 requiring the developer to transfer and handover all the balances and invoices to the plaintiff once it is established.

**[38]** Accordingly, I find that by reason of these statutory provisions in the SMA 2013, there is no legal necessity for an assignment under s. 4(3) of the G CLA from the developer or the liquidator to transfer to the plaintiff of its rights to collect the charges from the defendant. The SMA 2013 has cured the lacuna identified by the Court of Appeal in *Prangin Mall*. The reason why the Court of Appeal held that an assignment was required in that case was because there was no express statutory provision giving the developer the H right to collect the service charges and requiring the developer to transfer/ hand over that right to the JMB.

**[39]** For these reasons, I find that the learned Magistrate had erred in law when she held that the plaintiff's claim before June 2015, the BCPA applies and for the plaintiff's claims for the month of June 2015, the SMA 2013 I applies. She held:

A ... Oleh yang demikian, bagi tuntutan Plaintiff sebelum Jun 2015, Akta yang terpakai adalah Akta Bangunan dan Harta Bersama (Pengurusan dan Penyenggaraan) 2007 dan tuntutan Plaintiff bagi bulan June 2015, Akta yang terpakai adalah Akta Pengurusan Strata 2013.

In making the decision, the learned Magistrate had failed to take into account B the retrospective application of the SMA 2013 to developers of developments that have been completed prior to the commencement of the SMA 2013 and to JMB's established under the BCPA.

**[40]** I also find that the learned Magistrate had erred in law by holding that based on the decision in *Prangin Mall*, the plaintiff did not have any *locus* to C claim the outstanding charges prior to its establishment because there was no assignment under s. 4(3) of the CLA from the developer or the property managers to the plaintiff.

**[41]** With respect, I find that the learned Magistrate's reason for arriving at such a decision flawed. She had failed to take into account the lacuna in D the BCPA identified in *Prangin Mall* was rectified by the SMA 2013. Thus, the very reason why the Court of Appeal in *Prangin Mall* held that an assignment was required to transfer/hand over a developer's contractual rights to a JMB no longer exists with the commencement of the SMA 2013. Chapter 2 of the SMA 2013 expressly provides that the Act applies E retrospectively to the period prior to the establishment of the JMB to developers of development areas that have been completed prior to the commencement of the SMA 2013. Developers of buildings completed on or before 1 June 2015 are retrospectively given the statutory power by the SMA 2013 to collect the service charges from parcel owners prior to the F establishment of a JMB and if they had been collecting the charges before 1 June 2015, they can continue collecting such charges until the JMB is established (see s. 13(2) of the SMA 2013).

*Has Limitation Set-in?*

G **[42]** Section 33 of the SMA 2013 stipulates that a JMB is entitled to recover from a parcel owner the sum due to it in a court or in the Strata Management Tribunal ("tribunal"). Section 105 of the SMA 2013 expressly states that:

105.(2) For avoidance of doubt, the Limitation Act 1953 [Act 254] shall H not apply to proceedings of the Tribunal.

**[43]** The SMA 2013 is silent on whether the Limitation Act 1953 is similarly inapplicable to proceedings in court. As a JMB can choose to either file a claim in the tribunal or in a court of competent jurisdiction, I am of the view that it can be implied that the Limitation Act shall also not apply I to proceedings of court. To interpret otherwise result in a discrepancy as to claims made at the tribunal and at court.

**[44]** Moreover, s. 17A of the Interpretation Acts 1948 and 1967 requires a purposive approach in statutory interpretation. It states as follows:

> 17A. Regard to be had to the purpose of Act
>
> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

**[45]** In *Palm Oil Research And Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd* [2004] 2 CLJ 265; [2005] 3 MLJ 97, the Federal Court held that pursuant to s. 17A of the Interpretation Acts 1948 and 1967, the purposive approach is to be used for statutory interpretations. Steve Shim CJ (Sabah & Sarawak), in holding that the purposive approach is to be used for statutory interpretations, said as follows:

> It is pertinent to note that s. 17A was a recent amendment under the Interpretation (Amendment) Act 1997 (Act A996) and became effective on 25 July 1997. This would be after the *National Land Finance Co-operative*. In my view, the law is now clear beyond doubt. Section 17A above enjoins the purposive approach to statutory interpretation. This applies to all statutes including taxing statues.

**[46]** The SMA 2013's stated purpose is "to provide for the proper maintenance and management of the buildings and common property, and or related matters". In my view, it would defeat the SMA 2013's stated purpose if the plaintiff's claim for the outstanding service charges made at court is time-barred whereas if the plaintiff had made the claim at the tribunal, it would not be time-barred.

**[47]** For this reason, I find that the Magistrate had erred in law when she held that limitation had set in under s. 6 of the Limitation Act 1953 and the plaintiff's claim against the defendant is statute-barred.

**Decision**

**[48]** For the above reasons, I find that an assignment of the debt to the plaintiff is not required for the plaintiff to maintain a claim against the defendant for the outstanding service charges due prior to the plaintiff's establishment.

**[49]** I also find that limitation has not set in and the plaintiff's claim against the defendant is, accordingly, not statute-barred.

**[50]** The plaintiff's appeal against the decision of the Magistrate is allowed. The decision of the Magistrate is hereby set aside. The defendant is liable to pay the plaintiff the sum of RM81,413.93 with interest of 5% to be paid from 26 June 2015 until the date of full settlement. Cost of RM10,000 to be paid by the defendant to the plaintiff subject to the payment of the allocator fee.